

REMARKS

This application has been reviewed in light of the Office Action dated April 17, 2007. Claims 1, 3, 8, 9, 10, 13, 17 and 21 have been amended to define still more clearly what Applicants regard as their invention, in terms that distinguish over the art of record. Claims 2, 12, 16 and 20 have been cancelled without prejudice or disclaimer of subject matter.

The specification has been amended to correct and obvious typographical error and to add a portion of the disclosure of U.S. Patent Application No. 09/533,045, which was incorporated by reference in its entirety at the time of filing of the present application. No new matter is added by this amendment.

Initially, Applicants note that the Office Action indicates that Claims 1-5, 8 and 12-15 only are pending. However, as indicated in the Supplemental Amendment filed on November 21, 2006, Claims 1-5, 8-10 and 12-23 are presented in this application. Applicants presume this was inadvertent but have in any event addressed the patentability of all of the claims. Should the Examiner issue rejection to claims 9, 10, 17-19, or 21-23, Applicants respectfully request that such be designated "Non-Final."

Claims 1, 8, 9 and 10 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter, particularly an abstract idea. In response, claims 1, 8, 9 and 10 have been amended so as to specify that they are directed to methods "for presenting user requested music via an interface," such that utility is clear. As explained, for example, in the specification at page 6 lines 6-11 and depicted in Figures 1 and 2, a user interface can be any WWW interface, display device interface, audio interface and the like.

Accordingly, claims 1, 8, 9 and 10 specifically recite steps involving the manipulation of actual data to present results to the user via an interface.

Accordingly, Applicants respectfully requests withdrawal of the rejections of Claims 1, 8, 9 and 10 under 35 U.S.C. §101.

The Office Action states that Claims 1-5, 8 and 12-15 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,963,916 (*Kaplan*). This rejection is respectfully traversed.

As the Examiner is aware, claims 1, 8, 9 and 10 relate to a method of classifying music by various classifications, namely "emotional quality," "situation quality," "sound quality," and "vocal quality". These are neither explicitly nor inherently disclosed by *Kaplan*. Instead, *Kaplan* is directed to a user controlled preview of music based on classifications of "genres" (*see Kaplan*, Fig. 31). These include Pop/Dance, Rock/Alternative, Heavy Metal, R&B Soul, Rap, Classical, Jazz, Movies/Shows, Country, New Age, World and Blues. Subcategories (*i.e.*, "Hot Zones") including Composer, Conductor, Vocalist, Ensemble, and Collection categories further control the preview (*see* Col. 14, lines 5-15).

None of these includes intense, happy, sad, mellow, romantic, heartbreaking, aggressive, upbeat, a workout, a shopping mall, a dinner party, a dance party, a slow dance, and for studying, a strong beat, a simple beat, a groove-type rhythm, a speech like sound, and an emphasis on a melody, sexy voice, a smooth voice, a powerful voice, a great voice and a soulful voice, as recited in the pending claims. Moreover, none of the Applicants' categories is inherent to any of *Kaplan's*, *e.g.*, "intense" is not inherent to "classical", which plainly may be intense or not. *Ex parte Skinner*, 2 USPQ2d 1789 (PTO

Bd. Pat. Ap. & Int'f. 1987)("Inherency, however, may not be established by probabilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.")

Accordingly, Applicants submit that Claims 1, 8, 9 and 10 are not anticipated by *Kaplan*, and respectfully request withdrawal of the rejections under 35 U.S.C. § 102(e).

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Claims 1, 3-5, 8-10, 13-15, 17-19, and 21-23 remain pending in this application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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